

THE OSAGE NATION
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Streamlining Deployment of Small Cell)	WT Docket No. 16-421
Infrastructure by Improving Wireless)	
Facilities Siting Policies;)	
Mobilitie, LLC Petition for)	
Declaratory Ruling)	

COMMENTS OF THE OSAGE NATION

Dr. Andrea A. Hunter
Tribal Historic Preservation Officer/Director

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April 7, 2017



The Osage Nation is a federally-recognized Indian tribe located on the Osage Indian Reservation, duly established by the Congress of the United States pursuant to (1) the Treaty between the United States of America and the Great and Little Osage Indians, September 29, 1865, 14 Stat. 687; (2) Article 16 of the Treaty between the United States of America and the Cherokee Nation of Indians, July 19, 1866, 14 Stat. 799; and (3) the Act of June 5, 1872, ch. 310, 17 Stat. 228. The Osage Nation Reservation is located in north central Oklahoma and the exterior boundaries comprise all of Osage County. The Osage Nation has concerns regarding cultural resources, protection of burials and sacred sites, the continuing destruction of sites and places of cultural significance, and the effects of this destruction on the cultural identity of the Osage people today. Cultural resources are revered by the Nation and are a connection to our past and important to our cultural identity, sense of self, and future well-being.

The Osage Nation works with a variety of federal agencies on small and large projects in the compliance of federal laws, including but not limited to the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the National Environmental Protection Act (NEPA), and the Archaeological Resources Protection Act (ARPA). Our tribe protects irreplaceable sites and locations that are of religious and cultural significance to our people today by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers.

The Federal Communications Commission's Tower Construction Notification System (TCNS) system has proven to be a very useful tool to track, monitor, and expedite the placement of cellular technology infrastructure. Over the past ten years, the Osage Nation has worked with and developed quality relationships with the many consultants installing telecommunication infrastructure facilities, including cell tower siting, through the TCNS Program. The Osage Nation provides prompt response to cell tower notifications. If and when any situations arise using the TCNS Program, tribes have been able to promptly contact industry consultants and/or FCC staff to expedite resolutions. With the emerging 5G technology by the wireless telecommunications industry we can see the benefits of modernizing the existing TCNS system to meet our needs. Though technically not a local government for the purposes of this rulemaking, Indian tribes face many of the same challenges that have been described in the Public Notice and which the telecommunications industry has mentioned as a concern to their interests.

In the Public Notice, the FCC seeks comments regarding the period of time for reviewing siting applications, specifically, are the presumptive deadlines adopted in the *2009 Declaratory Ruling* appropriate for "small cells." The review period to process collocation applications was set at 90 days and for all other applications, i.e. "macrocells," was set at 150 days. In the *2014 Infrastructure Order*, the FCC clarified that the same "shot clocks" apply to DAS and small cell applications.

As participants in the Section 106 review process, Tribes have put into place specific policies and procedures for processing proposed FCC undertakings. For the Osage Nation Historic Preservation Office (ONHPO), the review process is a 23-step process:



Color Code: Administration funded by the Osage Nation (steps 1-13, 22-23)
Research funded by applicant (steps 14-21)

- 1) FCC tower notifications sent via U.S. Postal Service are received by the Osage Nation Mailroom and sorted for delivery to ONHPO via the Osage Nation Executive Office.
- 2) FCC tower notifications sent via U.S. Postal Service are received by the Osage Nation Executive Office, sorted, logged, then delivered to ONHPO.
- 3) FCC tower notifications sent via Fed-Ex, UPS, or other commercial carrier are received by the Osage Nation Bulk Receiving Office, sorted, logged, then delivered to ONHPO.
- 4) ONHPO Administrative/Section 106 Assistant receives mail, date stamps all mail, enters all mail in Mail Received Database, sorts all mail for delivery to ONHPO staff.
- 5) ONHPO cell tower coordinator receives all FCC tower notifications, and pulls the PTC projects to be processed first.
- 6) Coordinator checks each project to insure that all requested documentation is submitted for review.
- 7) Coordinator contacts each consultant who did not provide the requested documentation.
- 8) Coordinator enters all specific cell tower and PTC project information into the FileMaker Pro relational database and assigns a project number to each project.
- 9) Coordinator creates a physical file folder for each project.
- 10) Coordinator enters the research fee check into the Checks Database.
- 11) Coordinator delivers all checks each day to the ONHPO Accountant.
- 12) ONHPO Accountant enters the check information into the ON Accounting department's database and deposits the check.
- 13) Coordinator delivers project files to the THPO for review.



14) THPO sends coordinate information to GIS Technician¹ who researches location and sends all relevant historic, prehistoric, and/or tribal maps to THPO.

15) THPO sends the coordinate information to the Tribal Research Assistant² who researches and pulls all relevant historic documentation and provides to THPO.

16) THPO sends the coordinate information to the assistant Archaeologist³ who researches and pulls all relevant prehistoric documentation and provides to THPO.

17) THPO⁴ reviews cultural resource survey reports for: a) *Secretary of the Interior's Professional Qualification Standards*, b) *Secretary of the Interior's Standards for Archaeological Documentation*, c) *Secretary of the Interior's Standards for Identification and Evaluation*, and d) due diligence.

18) THPO contacts each consultant when the Secretary of the Interior's standards or due diligence is not met and requests additional information.

19) THPO coordinates all the information received and researches additional archaeological/cultural site databases, graves database, and KMZ overlays of known significant cultural features, sites, villages, and mounds.

20) THPO analyzes all information gathered and if needed the Osage traditional elders are consulted on significant localities.

21) THPO makes a determination regarding the direct and in some cases indirect effects a tower project will have on sites of significance to the Osage Nation.

22) Coordinator enters the THPO's determination and any additional information into the FileMaker Pro database, generates the response letter, has it finalized, and THPO signs the letter.

23) Osage Nation mailroom retrieves letter, generates postage for letter, and delivers to post office.

¹ GIS Technician	M.A. in GIS
² Tribal Research Assistant	B.A. in American Indian Studies
³ Archaeologist	M.A. in Anthropology, specialty in Archaeology
⁴ THPO	Ph.D. in Anthropology, specialty in Archaeology



For all FCC collocations, macrocells, DAS, and small cells, the process of review includes the same 23-steps for each undertaking. A 90-day review period for DAS and small cells is the minimum time considered as reasonable by the Osage Nation. Although in many cases cultural surveys would not be necessary, the process for the tribe to determine if any significant cultural resources are or potentially may be in that location is the same.

Under the NHPA Section 106 process, an undertaking must be reviewed for direct and indirect effects on cultural properties eligible or potentially eligible for the National Register of Historic Places. Direct effects are associated with the physical location of the undertaking, the actual place on the landscape. Therefore, the actual size of the infrastructure, macrocell, DAS, or small cell, does not alter the procedure. What is being investigated in the review is the actual place on the landscape. The indirect effects are the effects beyond the physical manifestation of the undertaking, within a specified radius depending on height of tower. In this instance the size of the infrastructure is examined for its effect on significant cultural resources in the immediate vicinity. The size of the infrastructure does not reduce the time needed to complete the review process. It is the location of the infrastructure that may reduce the time. The location of a collocation, will most likely not require a cultural survey, and thus reduce the review time. The same can be stated for DAS and small cells located in urban areas and collocated. The same cannot be stated for small cells proposed in Rights-of-Way (ROW).

In the experience of the Osage Nation, there is a significant danger in providing exemptions for undertakings located within a ROW as they are often considered to be disturbed in their entirety regardless of whether this is actually true. Identifying an area as a ROW does not disturb the soil in any way. It must be strongly emphasized that ROWs are not necessarily disturbed particularly as land purchased or otherwise obtained as ROW is often considerably wider/larger than the originally proposed infrastructure (road, railroad, transmission line). Small cells proposed for a ROW location will be closely investigated. The Osage Nation does not support the use of public ROWs for deployment of infrastructure facilities.

The Osage Nation contends that a 90-day review period for small cells will provide a reasonable timeframe to complete the process (Figure 1). To provide assistance with deadlines, the TCNS could be revised to track the movement of proposed projects. The Osage Nation would gladly participate in discussions to upgrade the TCNS program.

The FCC also seeks comment on the concept of batching, processing multiple small cell projects under a single TCNS entry. As explained above, the Osage Nation has a 23-step process that is performed for each proposed cell project. Batching would not save time. There is no increase in efficiency on the part of the tribe's review time. There would be some time saved during administrative actions in steps 1-8 as only one packet of information would be logged and transferred. However, the time saved would be eliminated in step 9 as multiple copies of all documentation would be made to create each project file. Overall, batching would cause a decrease in efficiency by causing an increase in time to process. The Osage Nation does not support the concept of batching as it does not expedite the process, but rather impedes the process.

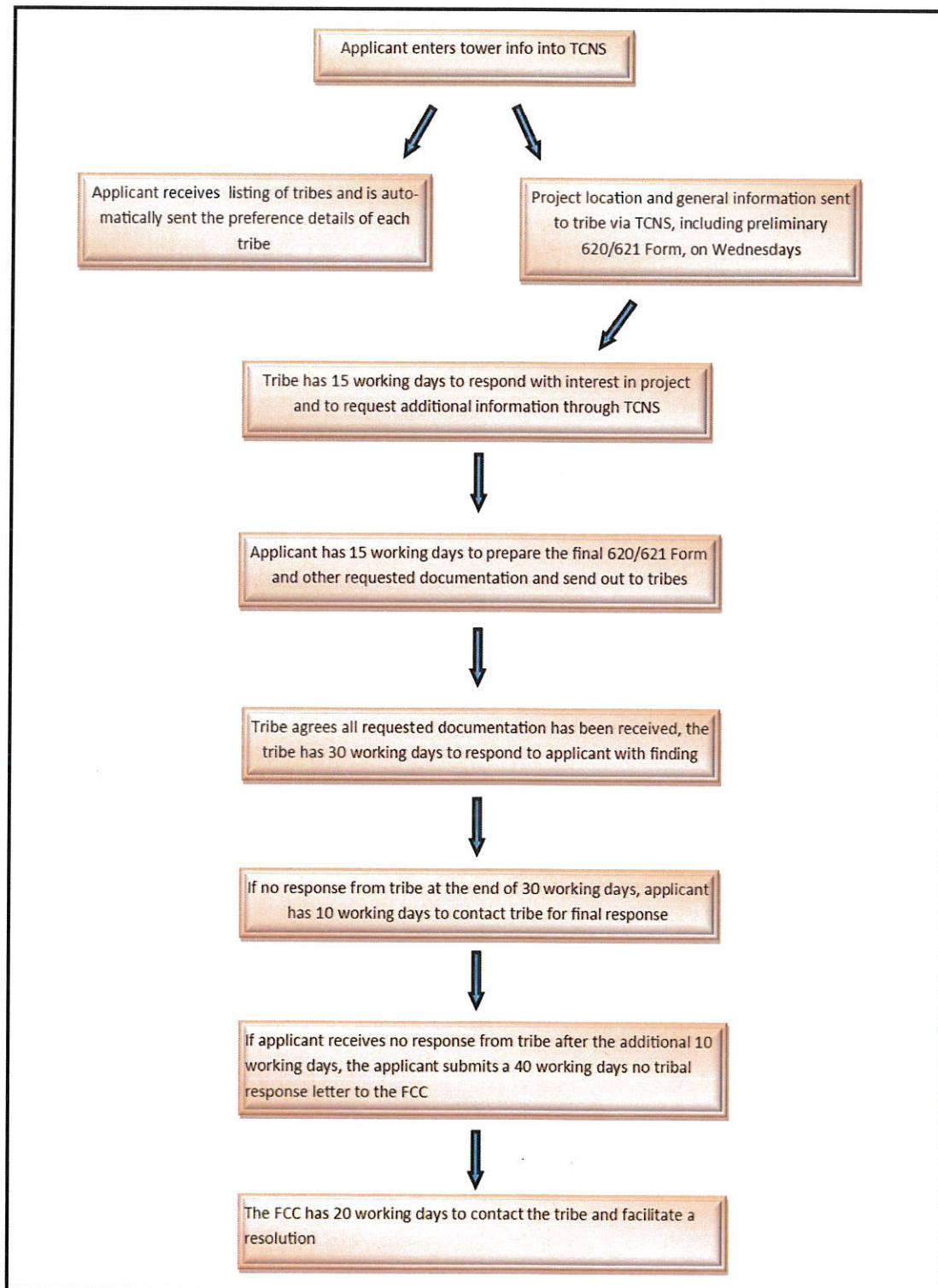


Figure 1. Flow Chart for 90-day Section 106 Review.



In considering what could improve the process and cut down on the overall Section 106 review time one key point stands out. The process revolves on documentation such as documentation of the project specifications, cell specifications, infrastructure logistics, known cultural properties, and tribal cultural properties. For the tribe, the Section 106 review process starts when all requested documentation has been received by the Tribal Historic Preservation Officer. In using the 90-day review period as an example (Figure 1), thirty days could be reduced from the review process if all documentation was initially uploaded in TCNS. Currently, a tremendous amount of time is wasted waiting on consultants to provide the tribe's requested information.

By policy, the Osage Nation charges a research fee for Section 106 projects that are for-profit. In the Osage Nation's 23-step Section 106 review process outlined above, the specific research procedures that constitute the research fee are highlighted in green and the administrative procedures funded by the Osage Nation are highlighted in red. It is of the upmost importance to the Osage people that we protect our significant and sacred cultural sites and burials. The Osage Nation Historic Preservation is staffed with four professional archaeologists, one professional GIS technician, and one tribal research assistant. The services of these individuals requires a just compensation. The Osage Nation expects the highest quality of work from the Historic Preservation Office in their efforts to achieve the preservation goals of the Nation. The Osage culture spans 1,000s of years in the states of Missouri, Arkansas, Illinois, Wisconsin, Kentucky, Indiana, Ohio, West Virginia, and Pennsylvania, and 100s of years in Kansas, Oklahoma, Louisiana, Texas, and Colorado. The Osage Nation's Section 106 work load is tremendous and requires qualified staff to work efficiently.

With the emerging 5G technology by the wireless telecommunications industry, there is a need to modernize the existing TCNS system to meet the multiple small cell technology. We encourage the FCC to bring all affected parties together to discuss solutions. The Osage Nation looks forward to the opportunity.

Respectfully submitted,

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